

RECEIVED  
FEDERAL ELECTION  
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION 2016 SEP 23 PM 1: 57

)  
)  
)  
)  
MUR 7094 / 7096 / 7098 CELA

**RESPONSE OF DONALD J. TRUMP, DONALD J. TRUMP FOR PRESIDENT, INC.  
AND TIMOTHY JOST, AS TREASURER, TO THE COMPLAINTS**

By and through undersigned counsel, Donald J. Trump, Donald J. Trump for President, Inc., (the "Committee") and Timothy Jost, as Treasurer (collectively, "Respondents") respond to complaints in the above-captioned MURs. We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the complaint, and close the file.

**I. BACKGROUND**

Based on news reports, the Committee received three complaints<sup>1</sup> alleging that Respondents solicited contributions from foreign nationals. Not surprisingly, the complaints fail to tell the whole story. In reality, the complaints make much about a generalized email solicitation, a mass mailing "blast" of the kind that are commonplace in campaigns and well-known to any person who has signed up for a political mailing list. Complainants contend that since "dozens" of such emails were allegedly received by foreign nationals, that amounts to the Committee's impermissible solicitation of foreign nationals. But the Committee merely sent email to recipients who have interacted with the Committee, mainly *via* submitting contact information on the Committee website. In other words, to be on the list, someone has to sign up.

<sup>1</sup> One complaint (MUR 7098) is from the American Democracy Legal Fund, one part of a cluster of organizations that function as a *de facto* private wing of the Democratic Party and Democratic candidate for President. That its head, Brad Woodhouse, also heads Correct the Record—a Super PAC which provides services to the Clinton campaign as its "strategic research and rapid response team designed to defend Hillary Clinton," and subject to a FEC complaint of its own—is indicative of its plainly partisan political nature. The second (MUR 7094) is from serial complainants Democracy 21, Campaign Legal Center, and Paul S. Ryan. The third complaint (MUR 7096) merely requests an investigation based on a couple of vaguely referenced news articles. Given that all three complaints arise from the same set of allegations, Respondents file this response in connection with all three matters.

Moreover, the Committee's email list contains over three million records, meaning the "dozens" of emails that form the basis of the complaint represent an error rate of merely one-hundred-thousandths of one percent—a negligible and immaterial number by any measure.

The Internet, as the Commission knows, has ushered in a new era of politics, providing elected officials, candidates, and their campaigns new methods to communicate directly with voters and the general public. In the past, campaigns relied on geographically-based methods of TV and radio advertising, direct mail, or a phone number hard wired to a specific address, which allowed some reasonable certainty about with whom one was communicating. In the wireless, social media era, however, one can sign up for email addresses or to receive communications with little more than the right combination of characters and punctuation symbols.

In modern campaigns, email lists, social media followers, and other direct contact methods are critical. Most every federal candidate has a website that allows visitors to sign up for emails from the campaign, often only requiring an email address or perhaps some semblance of a name to be added. The Committee's website is no different, allowing visitors to sign up for emails and other communications from the campaign. This has led to the Committee's amassing a distribution list of over 3,000,000 email addresses, to go with over 11,200,000 followers on Twitter, and 10,500,000 on Facebook. To put this in perspective, the population of the City of Chicago is smaller than the Committee's email list.

To these 3,000,000 email addresses, along with millions of Twitter and Facebook followers, millions more users who may see advertisements on such platforms, and Google users viewing advertisements and promoted web results, go numerous, undifferentiated communications, sometimes including entreaties to contribute to the campaign. These communications form the backbone of small-dollar grassroots fundraising and mobilization

efforts—the same efforts that draw widespread praise and propelled the Obama for America and the Bernie Sanders campaigns before and Mr. Trump’s campaign now. Such efforts combine targeted messages with appeals to sign online petitions, sign-up on websites, get involved, and/or respond with small-dollar contributions to the campaign. The cost of any individual email message is negligible. It is these sorts of generalized communications—what the complaint cites one person as cynically calling “bog-standard campaign spam”—that are the subject of the complaint.

The Committee does not discriminate between individuals who sign up for the email list. Almost all of those on the list are certainly supporters or potential voters who genuinely wish to receive communications from the campaign, but the list undoubtedly also includes the emails of reporters, staff for opposing candidates, and others who may not be supporters but who wish to be in the know about the campaign’s communications. But the fact that it is so easy to input basic information into a website can be a means for self-amusement or other shenanigans. Like the Form 2 filings on behalf of “candidates” with sophomoric names that have recently plagued the Commission’s public filings, *see* News Release, *FEC Adopts Interim Verification Procedure for Filings Containing Possibly False or Fictitious Information* (Aug. 18, 2016), some negligible portion of those who sign up for the electronic mailing lists do so with names or email addresses for “Barack Obama,” “Michael Jordan,” “Mickey Mouse”—or worse. This problem is not new or unique; in 2012, Obama for America drew devastating headlines and one of many complaints about OFA’s fundraising practices regarding foreign contributions for receiving a contribution from “Osama bin Laden” with an email address of [OsamaforObama2012@gmail.com](mailto:OsamaforObama2012@gmail.com). *See* MUR 6687 (Obama for America).

Though the Committee cannot possibly be certain of the particular circumstances surrounding the inputting of the email addresses referenced in the complaint, one of the complaints concedes that such email addresses are publicly available and could have been inputted into the website sign-up page by anyone with an internet connection. See MUR 7094 Complaint at ¶ 7; see also Adam Weinstein, "Why is Team Trump asking liberal Scottish politicians for donations," *Fusion* (June 27, 2016). Simply put, in order to have received the email cited in the Complaint, someone had to affirmatively sign up to do so.

## II. ANALYSIS

**A. *The unintentional and incidental distribution to an alleged foreign national of a generalized and widely distributed communication including an appeal for campaign contributions is not a knowing solicitation of a foreign national.***

The complaint fails to allege or otherwise support the claim that the Committee intentionally or knowingly solicited foreign nationals. Knowledge is critical; the Commission's regulations implementing BCRA's expanded prohibition on the solicitation, acceptance, or receipt of a contribution or donation from a foreign national expressly includes a knowledge component. BCRA and the Commission's implementing regulations came in the wake of a number of incidents where fundraising agents of campaigns and party committees were soliciting and receiving campaign contributions from known foreign national individuals See MUR 4520 (DNC). The regulation's Explanation & Justification expressly cites MUR 4520 when discussing the knowledge requirement in the regulation, and the regulation includes three standards for "knowingly." At their essence, they are: actual knowledge, substantial reason to know, and willful blindness. 67 CFR 69928, 69941 (Nov. 19, 2002). "Actual knowledge" is self-explanatory, and the "substantial reason to know" and "willful blindness" standards both require awareness of "pertinent facts" such as those included as examples in the regulatory text:

That "the contributor or donor uses a foreign passport"; that the "contributor or donor provides a foreign address"; or that the "contributor or donor makes a contribution or donation by means of . . . written instrument drawn on a foreign bank." 11 C.F.R. § 110.20(a).

None are present here. In fact, the examples are particularly instructive in this instance because all three discuss providing identification, a physical address, or foreign funds that would give a campaign substantial notice that a particular contribution about to be made is from a potential foreign source. The pertinent facts that would demonstrate knowledge, in other words, are all based on the knowledge of a *particular contribution* from a *particular person*. Here, there is nothing of the sort. A generalized appeal sent electronically to millions of email addresses inputted by individuals who had previously interacted with the campaign on-line and requested communications from the campaign does not meet the knowledge requirement for a prohibited solicitation.

Further, the Committee did not add or intentionally include the foreign nationals in the list, and there was no reason to suspect that the emails would be sent to foreign nationals. No communication regarding contributions was targeted to individuals or particular groups that would bear a probability of being foreign nationals. No communication included any text or other indication that it was targeted to foreign nationals or implied that foreign nationals should contribute. And "dozens" of emails among more than a million recipients represents a negligible, extremely *de minimis* number of incidental email addresses among the total distribution—not tenths, or hundredths, or thousandths or ten-thousandths of one percent of the distribution, but a few hundred-thousandths of one percent. For comparison's sake, for restricted class communications, a three percent error rate—a number 100,000 times larger than the amount at

issue here—has long been considered incidental. FEC Advisory Opinions 1978-97 (National Association of Postal Supervisors); *see also* AO 2003-14 (Home Depot).

Complainants contend that because an email address matches a publicly available government email address or includes a foreign domain, there is a substantial probability that the email recipient is a foreign national. But it is not that simple. First, it is simply not feasible to conduct a record-by-record review of a multi-million entry email list in order to monitor individual records, and so it would be improper and unreasonable to impute *ex post* knowledge of the inclusion of any one particular email address—or even any of “dozens” of email addresses among millions—to the Committee. However, once the Committee becomes aware that an email is foreign, that email is removed or otherwise suppressed from the list.

Second, merely excluding all email addresses that are not from the common U.S. domains would exclude legitimate requests for information from voters. The Internet Assigned Numbers Authority has assigned over 1,000 total domain extensions worldwide, including privately sponsored ones like “.aarp” for the retirees’ association or “.gop” for the Republican State Leadership Committee. And so excluding those that were originally assigned to be country codes no longer works because a number of what used to be foreign domain extensions have become popular domain extensions for email and web addresses. For example, “.tv,” while technically the national extension of Tuvalu, is used widely in the U.S. because of its fortuitous abbreviation. And unlike physical addresses, which are affirmatively tied to one country or another, a person may use an email address with any number of domain extensions simply by navigating to that site. Plus, since email addresses are fully portable, someone who has once lived or studied abroad and obtained an email address there may continue to use that address after returning to the United States. Because myriad circumstances could lead to the *bona fide*

use of a domain extension other than ".com," ".org," or ".us," by an eligible voter, there is no way to impute the requisite knowledge to the Committee merely because an email blast contains email addresses with supposed non-U.S. domain extensions.

To require campaigns to affirmatively root out email addresses merely due to an assumed foreign domain extension would require campaigns to either rebuff legitimate requests from eligible voters and donors for campaign communications or undertake a massive manual record-to-records of every email address with a non-U.S. extension—something that would be an unprecedented requirement and would depart radically from the standard set by the Commission's regulations and precedents. The Commission has previously dismissed allegations that involve solicitations made from "foreign websites or those frequented by foreign nationals" which commented on a campaign's "alleged lack of adequate safeguards to prevent the receipt of contributions from foreign nationals"—a level of notice of potentially prohibited activity clearly not present in this case. See MUR 6772 (Obama for America). In another MUR, the Commission dismissed the allegation that Obama for America made knowing solicitations to foreign nationals by hosting a "Bin Laden" web page soliciting contributions from "many holy foreign donors" on the campaign's grassroots fundraising platform in part because the page had only received a \$3 contribution from the complainant. MUR 6687 (Obama for America) F&LA at 8. The Committee's solicitation here bears no such indicators or being targeted to foreign nationals.

Moreover, the Commission has indicated that even using a foreign physical address on a contribution made (not merely solicited) "is not . . . *prima facie* evidence [to] establish that the contributors are foreign nationals or that their contributions should be suspect." MURs 6078/6090/6108/6139/6142/6214 (Obama for America) F&LA at 13. It is merely something that

"might serve as pertinent information in examining the contribution." *Id.* at 14. "The mere presence of such indicators does not establish reason to believe," even in the case of *receiving* a foreign national contribution. *Id.* Certainly, an undifferentiated, generalized email blast cannot be held to a higher standard than the actual receipt of contributions from foreign nationals. The Commission should therefore find no reason to believe, dismiss the complaint, and close the file.

***B. The Complaint does not allege that the Committee accepted or received any contributions from foreign nationals, and further fails to acknowledge that the Committee employs safeguards the Commission has previously found sufficient.***

In the absence of knowing, particularized, personal solicitations made by agents of a committee, Commission regulations and precedents regarding the solicitation, acceptance, and receipt of foreign contributions almost exclusively rely on the actual acceptance and receipt of prohibited funds. In fact, the Commission clearly contemplates a committee's inadvertent receipt of impermissible contributions so long as those are identified and refunded and allows Committees to remedy such receipts by refunding the contribution. *See* 11 C.F.R. § 103.3(b); MURs 6078/6090/6108/6139/6214 F&LA at 15-16. Here, there is no allegation in the complaints that the Committee accepted funds from a foreign national.

The Committee employs certain safeguards to prevent such funds from being accepted that the Commission has previously indicated were sufficient, even when foreign national contributions were made. Namely, if a contribution presents genuine questions or is accompanied by facts that would suggest a substantial possibility that it made by a foreign national, the Committee requires the contributor to provide a current and valid copy of his or her passport. *See* 11 C.F.R. § 110.20(a)(7); *see also* 11 C.F.R. § 103.3(b).

In addition, the Committee employs additional safeguards cited in MURs 6687, 6772, and 6078/6090/6108/6139/6142/6214 (all, Obama for America). Before a contribution is made,



the Committee's contribution website clearly states that "Contributions from corporations, labor unions, federal contractors, and foreign nationals are prohibited." It also contains a notice that "By clicking 'Donate,' I certify that the following statements are true and accurate: I am a U.S. Citizen or lawfully admitted permanent resident." In accepting contributions, the Committee's website donation system requires potential donors to enter a United States address and does not accept non-U.S. addresses. The Committee does not accept written instruments or other contributions made in foreign currencies. If a contribution is received with a foreign address, the Committee sends a request for a copy of a valid U.S. passport and rejects contributions from contributors whose status cannot be confirmed with a passport.

Such safeguards have been found sufficient in past MURs. In dismissing two complaints against Obama for America involving allegations of knowingly soliciting foreign nationals, the Commission cited the respondent's compliance regime in accepting and scrutinizing possible foreign contributions. *See* MURs 6687, 6772 (Obama for America); *see also* MURs 6078/6090/6108/6139/6142/6214 (Obama for America) (also citing the compliance regime in dismissing allegations regarding the receipt of foreign contributions). Importantly, the Commission found that, even in connection with contributions solicited via a website that made explicit reference to the Obama campaign's alleged lack of safeguards to prevent foreign contributions, "[t]o the extent that internet traffic may have been directed to the Committees' internet donation page from foreign websites, blogs, or servers, any contributions received would still have undergone the same review process that the Commission was adequate in [previous MURs]." MUR 6772 (Obama for America) F&LA at 8.

It is clear that the focus of the law, regulations, and Commission's enforcement actions has been to prevent or address the knowing acceptance of contributions by foreign nationals, and

that a Committee's actions on that front can demonstrate that any incidental and unintentional solicitation that reaches a foreign national was not done "knowingly."<sup>2</sup> Such safeguards were repeatedly approved by the Commission in the series of MURs involving Obama for America's treatment of foreign nationals, even in light of multiple public reports concerning the number, suspicious amounts, and public reports of failure to use industry-standard card security measures—allegations far more pervasive than the ones here. Accordingly, the Commission should similarly find no reason to believe, dismiss the complaint, and close the file.



Donald F. McGahn II  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 879-3939

*Counsel for Donald J. Trump for President, Inc.,  
Donald J. Trump, and Timothy Jost, as Treasurer*

<sup>2</sup> This also reflects the reality that it is nearly impossible to prevent a solicitation from reaching any incidental foreign national recipients—especially in connection with online fundraising.